

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**ALEX DURODE JOHNSON, III**

**PLAINTIFF**

**v.**

**No. 4:07CV47-P-A**

**STATE OF MISSISSIPPI, ET AL.**

**DEFENDANTS**

**ORDER OF DISMISSAL**

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff, a prisoner proceeding *pro se*, seeks review of his sentence imposed under the laws of Mississippi. The plaintiff alleges that actions by his defense counsel and officials of the state led to his erroneous conviction – a conviction based upon testimony of at least one witness who was intimidated prior to his testimony. The plaintiff does not challenge the conditions of his confinement, as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his claim under 42 U.S.C. § 1983 is not ripe for consideration and should be dismissed without prejudice to his ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.

**SO ORDERED**, this the 14<sup>th</sup> day of May, 2007.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE